Supreme Court of the United States.

OCTOBER TERM, 1904.

THE TEXAS AND PACIFIC RAILWAY COMPANY,
Plaintiff in Error,
vs.
GEORGE H. DASHIELL.

No. 212.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY TO DEFENDANT IN ERROR'S SUPPLEMENTAL BRIEF AND ARGUMENT.

We submit that the matters discussed in the Supplemental Brief and Argument filed by the defendant in error, by leave of Court, are irrelevant to the single issue presented to the Court for review.

In the record the only references on the trial to the release are as follows:

(1) When the release was offered in evidence the trial Judge said:

"The release will obtain as to the particular matters or injuries set out specifically in the first part of it. There will be no recovery for any injuries which are specifically set out in the release, because that release has not been set aside. Only those matters, or injuries, will be submitted to the jury which are not incorporated in the release" (Tr., p. 77).

Defendant immediately took an exception (Tr., p. 77).

(2) The Judge in his charge to the jury used the following language:

"On the question of the release of the defendants from liability for the injury sustained by plaintiff you are charged that the agreement entered into between the plaintiff and the defendant company which has been introduced in evidence is a release of the defendant from liability for the particular injuries which are enumerated in the face thereof, to wit, injuries to his body, right leg, right arm and a scalp wound. The court does not, however, construe it to be a release for the injuries alleged to have been received by him, resulting in the impaired mental powers and in the partial loss of sight in his left eye. These injuries are those for which damages are sought in this action and the consideration of which will be submitted to you in this charge" (Tr., p. 91).

Plaintiff, Dashiell, asked for no instructions and took no exceptions, but the defendant specially excepted to this charge (Tr., p. 94). Thus was raised the question whether or not the release by its terms included the injuries sued upon in this action. If it did not there was no error. If it did there was error for which the judgment below should be reversed and the case remanded for such further proceedings as to this Honorable Court may seem meet.

The judgment should be reversed and the case dismissed.

Respectfully submitted,

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WINSLOW S. PIERCE,

Counsel for the Railway Company.